

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 4:52 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: link to the company in OK

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 04:51 PM -----

From: Gerardo Acosta/R6/USEPA/US  
To: Kristin Dunbar/R6/USEPA/US@EPA,  
Cc: Jeannine Hale/R6/USEPA/US@EPA, David McQuiddy/R6/USEPA/US@EPA  
Date: 02/12/2009 11:53 AM  
Subject: link to the company in OK

Jeannine,

Below is the link to the company in OK that we talked about today. Thanks for your assistance on this.

<http://PhillipsCompany.4t.com/>

Regards,

Gerardo Acosta, Coordinator  
Pesticide Enforcement

US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 4:52 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: FIFRA690304 PHILLIPS COMPANY LLC

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 04:51 PM -----

From: Gerardo Acosta/R6/USEPA/US  
To: Kristin Dunbar/R6/USEPA/US@EPA,  
Date: 09/09/2009 03:50 PM  
Subject: Fw: FIFRA690304 PHILLIPS COMPANY LLC

---

Did we close this one? If not, let's plan on getting it closed soon, since I recall you were filing it a while ago. Thank you!

Regards,

Gerardo Acosta, Coordinator  
Pesticide Enforcement

US EPA Region VI  
1445 Ross Avenue (6PD-T)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 09/09/2009 03:46 PM -----

**FIFRA690304 PHILLIPS COMPANY LLC****CINWD AcctsReceivable**

to:

Gerardo Acosta, Kristin Dunbar,  
Chuck Ruple, Lorena Vaughn,  
Michelle Angel, Connie Overbay

09/09/2009

Sent  
by:**Kim White**

This collection was received on 7/13/09  
[attachment "FIFRA690304.pdf" deleted by Gerardo Acosta/R6/USEPA/US]

**Document Review****IFMS Document: BD 2760945P418****09/09/09****Document Summary:** General Ledger Entries**Document:** BD 2760945P418**SFO:** AP27**Date:** 09/03/09**Amount:** \$3,500.00**Collected:** \$3,500.00**Closed:** 09/08/09**Due From:** PHILLIPS COMPANY LLCDR HOWARD PHILLIPS  
311 NW CHICKASAW ST,  
MILLERTON, OK 74750**Due Date:** 10/03/09**Comments:** FIFRA690304**Interest:** \$0.00**Handling:** \$0.00**Penalty:** \$0.00**Writeoff:** \$0.00**Document Details:**

Line	Line Amt	Collected	Writeoff	Closed	Int Rate	Reporting Category
001	\$3,500.00	\$3,500.00	\$0.00	\$3,500.00	3.000	45-FINES, PENALTIES: FIFRA

**Document Activity:**

Date	Ref Amount	Related Document	Direction	Date	Ref Amount	Related Document
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09/08/09	\$3,500.00	<u>CR</u> <u>FIFRA690304</u>	Forward				
09/08/09	\$3,500.00	Increase					

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[Warehouse Homepage](#)  
[EPA@Work Home](#) | [EPA Internet](#)  
[http://iasint.rtpnc.epa.gov/neis/ifms\\_doc.resolve](http://iasint.rtpnc.epa.gov/neis/ifms_doc.resolve)  
 This web page was last updated on 03/10/2007.  
 This data was last updated on 09/09/2009 12:02  
 This page coordinated by: [Dee Hinson](#)

---

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 4:51 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: Status Update

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 04:50 PM -----

From: Kristin Dunbar/R6/USEPA/US  
To: "hp" <hp@valliant.net>,  
Cc: Gerardo Acosta/R6/USEPA/US@EPA, Rexene Hanes/R6/USEPA/US@EPA, Elizabeth Reyes/R6/USEPA/US@EPA, Chuck Ruple/R6/USEPA/US@EPA, Lee McMillan/R6/USEPA/US@EPA  
Date: 03/10/2009 09:15 AM  
Subject: Status Update

Mr. Phillips-

Would you be available for a conference call tomorrow at 10:00am CST to discuss the financial package in the mail (which I have not received yet and will inform when I do) and to discuss the violation/ penalty? Thank you.

Kristin Dunbar  
Pesticides Section  
Multimedia Planning and Permitting Division  
Region 6 EPA  
Dallas, TX  
214-665-8129  
dunbar.kristin@epa.gov

"In the end, we will conserve only what we love. We will love only what we understand. We will understand only what we are taught." Baba Dioum

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 4:41 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: Scientists Learning to Target Bacteria Where They Live -- StaphWash Plus -- What you need to know, in a nutshell, about MRSA and BIOFILMS

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 04:41 PM -----

From: Gerardo Acosta/R6/USEPA/US  
To: Kristin Dunbar/R6/USEPA/US@EPA, Elizabeth Reyes/R6/USEPA/US@EPA, Chuck Rupple/R6/USEPA/US@EPA, Lee McMillan/R6/USEPA/US@EPA, David McQuiddy/R6/USEPA/US@EPA,  
Cc: Rexene Hanes/R6/USEPA/US@EPA  
Date: 03/09/2009 11:03 AM  
Subject: Fw: Scientists Learning to Target Bacteria Where They Live -- StaphWash Plus -- What you need to know, in a nutshell, about MRSA and BIOFILMS

Kristin,

I can print these "fliers" or you can ask him later (when the time is due) about any claims made to sell his product (for hospitals, prisons, especially to clean of hard surfaces).

Regards,

Gerardo Acosta, Coordinator  
Pesticide Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

Please consider the environment before printing this e-mail.

----- Forwarded by Gerardo Acosta/R6/USEPA/US on 03/09/2009 10:57 AM -----

---

Biofilm interaction is a major reason why StaphWash is virtually 100% effective in fighting bacteria including *Pseudomonas aeruginosa*, which often affects lungs and can debilitate and kill cystic fibrosis sufferers; methicillin-resistant *Staphylococcus aureus* (MRSA), which can spread quickly through prisons, hospitals and even beaches; and *Acinetobacter baumannii*, which often plagues hospital patients and wounded soldiers returning from battle in the Middle East.

[www.PhillipsCompany.4T.com/FieldTest.pdf](http://www.PhillipsCompany.4T.com/FieldTest.pdf)

---

## Scientists Learning to Target Bacteria Where They Live

By Kari Lydersen  
Washington Post Staff Writer  
Monday, March 9, 2009

CHICAGO -- In the arms race between humans and bacteria, the ability to form "biofilms" -- large aggregations of microbes embedded in a slimy matrix -- has been one of the weapons the organisms use to defeat the immune system, antibiotic drugs and other threats. But scientists, who only recently recognized the role that biofilms play in antibiotic resistance, may be closing in on promising prospects for defeating pathogens.

Scientists have learned that bacteria that are vulnerable when floating around as individual cells in what is known as their "planktonic state" are much tougher to combat once they get established in a suitable place -- whether the hull of a ship or inside the lungs -- and come together in tightly bound biofilms. In that state, they can activate mechanisms like tiny pumps to expel antibiotics, share genes that confer protection against drugs, slow down their metabolism or become dormant, making them harder to kill.

The answer, say researchers, is to find substances that will break up biofilms.

"Since the time of Pasteur, we've been working on trying to kill off and control planktonic bacteria, but we've made very little progress in the control and understanding of biofilm bacteria," said David Davies, a biofilm expert at the State University of New York at Binghamton. "Now we're very good at getting rid of acute bacterial infections, which used to be a real scourge of mankind,

but we have this incredible number of chronic, debilitating bacterial infections" often linked to biofilms.

Notorious biofilm infections come from the bacterium *Pseudomonas aeruginosa*, which often affects lungs and can debilitate and kill cystic fibrosis sufferers, and methicillin-resistant *Staphylococcus aureus* (MRSA), which can spread quickly through prisons, hospitals and even beaches. *Acinetobacter baumannii* infections, which plague wounded soldiers, are also probably caused by biofilms, as are more mundane afflictions such as sinusitis and ear infections.

*A successful means of dispersing biofilms, Davies said, would be a medical breakthrough akin to the discovery of penicillin in 1928.*

Full text of this article online at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/08/AR2009030801778.html>

---

**Biofilm interaction is a major reason why StaphWash is virtually 100% effective in fighting MRSA and other bacteria.**

Test results available online at [www.PhillipsCompany.4T.com/FieldTest.pdf](http://www.PhillipsCompany.4T.com/FieldTest.pdf)



**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 4:25 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: CORRECTION -- EPA Asbestos and Small Business Ombudsman Response to Request  
**Attachments:** EPAsentRogersFACTcorrection90527.pdf

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 04:24 PM -----

From: JoanB Rogers/DC/USEPA/US  
To: "hp" <hp@valliant.net>  
Cc: Gerardo Acosta/R6/USEPA/US@EPA, Jeffrey Page/R6/USEPA/US@EPA, Kristin Dunbar/R6/USEPA/US@EPA  
Date: 05/27/2009 02:15 PM  
Subject: Re: CORRECTION -- EPA Asbestos and Small Business Ombudsman Response to Request

---

Mr. Phillips, thank you for your response and inquiry.

As I understand the facts based on your submitted information, in November 2007, when you received the telephone call from your distributor in Little Rock, the violation had already been discovered, hence EPA's presence in the office of Central USA Distributors, Inc. When you asked to speak to the EPA, the violation had already been discovered.

Though based on my understanding of the facts, it appears Phillips Company does not meet the guidelines for the Policy, EPA has already applied the principles of the Policy (to provide for the reduction, and under appropriate circumstances, for the waiver of civil penalties for violations of a statutory or regulatory requirement by a small entity) by offering a significant reduction from the original penalty (95%) and by offering special provisions for payment. Additionally, from the documentation that was provided, EPA was also considering "ability to pay" in determining penalty assessments on Phillips Company.

As noted, once a penalty has been enforced I do not have the authority to take action to overturn that decision. I am hopeful that the information I provided you to assist your company with any future compliance issues was helpful.

Joan B. Rogers  
U.S. Environmental Protection Agency  
Office of Small Business Programs  
Asbestos and Small Business Ombudsman  
1200 Pennsylvania Ave., N.W. (MC 1230T)  
Washington, D.C. 20460

Email: [rogers.joanb@epa.gov](mailto:rogers.joanb@epa.gov)  
Phone: 202-564-6568; Fax: 202-566-1505

Toll Free Hotline: 1-800-368-5888  
Local Hotline: 202-566-1970  
SBO Homepage: <http://www.epa.gov/sbo>  
Small Business Environmental Homepage: <http://www.smallbiz-enviroweb.org>

"hp" ---05/27/2009 11:59:45 AM---To: EPA, Attention Ms. Joan B. Rogers, Asbestos and Small Business Ombudsman  
cc: Jeffrey C. Page, Kr

From: "hp" <[hp@valliant.net](mailto:hp@valliant.net)>  
To: Kristin Dunbar/R6/USEPA/US@EPA, Jeffrey Page/R6/USEPA/US@EPA, JoanB Rogers/DC/USEPA/US@EPA  
Cc: Gerardo Acosta/R6/USEPA/US@EPA  
Date: 05/27/2009 11:59 AM  
Subject: CORRECTION -- EPA Asbestos and Small Business Ombudsman Response to Request

---

To: EPA, Attention Ms. Joan B. Rogers, Asbestos and Small Business Ombudsman  
cc: Jeffrey C. Page, Kristin Dunbar, and Gerardo Acosta, US EPA

Thank you for your letter. I believe that an important fact stated in the letter is in error. If this error is corrected, it will be seen that our company meets all of the guidelines for EPA to apply in reducing or waiving penalties for small businesses that come forward to disclose and make good faith efforts to correct violations.

Your letter advises that: "The Policy sets forth guidelines for the Agency to apply in reducing or waiving penalties for small businesses that come forward to disclose and make good faith efforts to correct violations. The discovery of the environmental violation of Phillips Company was not a self-disclosed violation."

The correct facts are:

1. The first verbal contact was made by me, to the EPA.
2. The first written contact was made by me, via email, to Mr. Acosta at the EPA.
3. Because our company initiated the first contacts with EPA, we believe the discovery of the environmental violation WAS a self-disclosed violation.

I have prepared an attached PDF document, especially for your review.

This document gives more details about our case, including referenced documentation. I am offering to identify and provide witnesses that can be used to establish the facts as described above, particularly regarding my claim that the first contact was made by me, to the EPA, thereby establishing self disclosure.

Request for action:

I am asking that you consider the facts as described above, with the hope that you will then agree that we meet all the criteria for penalty mitigation, as listed on your web site page.

Kind regards,

Howard Phillips, General Manager  
Phillips Company

---

----- Original Message -----

From: <[Rogers.JoanB@epamail.epa.gov](mailto:Rogers.JoanB@epamail.epa.gov)>

To: "Howard Phillips" <[hp@valliant.net](mailto:hp@valliant.net)>

Cc: <[Page.Jeffrey@epamail.epa.gov](mailto:Page.Jeffrey@epamail.epa.gov)>; <[Dunbar.Kristin@epamail.epa.gov](mailto:Dunbar.Kristin@epamail.epa.gov)>

Sent: Wednesday, May 20, 2009 10:57 AM

Subject: EPA Asbestos and Small Business Ombudsman Response to Request

>

> Good afternoon!

>

> The attached letter is in response to your request for me to advocate  
> for Phillips Company, with a view toward reducing EPA's proposed penalty.  
> If I can be of further assistance with future regulatory compliance  
> needs, please contact me.

>

> (See attached file: Phillips Response5-20-09.pdf)

>

> Joan B. Rogers  
> U.S. Environmental Protection Agency  
> Office of Small Business Programs  
> Asbestos and Small Business Ombudsman  
> 1200 Pennsylvania Ave., N.W. (MC 1230T)  
> Washington, D.C. 20460

>

> Email: [rogers.joanb@epa.gov](mailto:rogers.joanb@epa.gov)  
> Phone: 202-564-6568; Fax: 202-566-1505

- >
- > Toll Free Hotline: 1-800-368-5888
- > Local Hotline: 202-566-1970
- > SBO Homepage: <http://www.epa.gov/sbo>
- > Small Business Environmental Homepage: <http://www.smallbiz-enviroweb.org> (See attached file: *EPAsentRogersFACTcorrection90527.pdf*)



IvyMed

StingMed

Venom-X

StaphWash

Product licensing  
and manufacturing

*"Take it to the people"*

<http://www.phillipscompany.4t.com/>

To: EPA, Attention Ms. Joan B. Rogers, Asbestos and Small Business Ombudsman  
cc: Jeffrey C. Page, Kristin Dunbar, and Gerardo Acosta, US EPA

May 26, 2009

Thank you for your letter. I believe that an important fact stated in the letter is in error. If this error is corrected, it will be seen that our company meets all of the guidelines for EPA to apply in reducing or waiving penalties for small businesses that come forward to disclose and make good faith efforts to correct violations.

Your letter advises that:

**"The Policy sets forth guidelines for the Agency to apply in reducing or waiving penalties for small businesses that come forward to disclose and make good faith efforts to correct violations. The discovery of the environmental violation of *Phillips Company* was not a self-disclosed violation."**

The correct facts are:

- 1. The first verbal contact was made by me, to the EPA.**
- 2. The first written contact was made by me, via email, to Mr. Acosta at the EPA.**
- 3. Because our company initiated the first contacts with EPA, we believe the discovery of the environmental violation WAS a self-disclosed violation.**

These facts are supported by the following explanations.

## Explanations:

### 1. The first verbal contact was made by me, to the EPA.

In November, 2007, I received a **telephone call** from my distributor in Little Rock. I was surprised to learn that the EPA was there, in his office. That telephone call was not from the EPA. The phone call was from my distributor to me. The distributor, Central USA Distributors, Inc., is an independent company, and is not a part of my company beyond the fact that Central USA is a customer of my company. In that telephone call I asked to speak to the EPA. That was the first contact between me and the EPA, which was at my request, and by my action. Therefore, the first verbal contact was made by me, to the EPA. I provided disclosure at that time, and promised to document the disclosure in writing within 48 hours. Therefore, **The discovery of the environmental violation of Phillips Company WAS a self-disclosed violation.** The accuracy of these facts can be verified by witnesses.

### 2. The first written contact was made by me, via email, to Mr. Acosta at the EPA.

Following is a copy of the first part of that email message.

---

**From:** hp@valliant.net  
**Date:** Tuesday, November 27, 2007 7:22 PM  
**To:** susie.nichols@aspb.ar.gov; acosta.gerardo@epa.gov  
**Cc:** Centralusa@aol.com  
**Subject:** EPA compliance

---

Mr. Acosta and Ms. Nichols --

Thank you for the helpful information you provided during our telephone conversation today.


VISIT -- Although your plans didn't allow for you to visit here on your return from Little Rock to Dallas today, you are invited to visit here when it is convenient. I am sometimes out of the state, so if you can let me know when you can be here I will try to be here (Oklahoma location) to host your visit. Or, if you would like to visit when I am in the Arizona location, I can coordinate my travel plans with you so that we can meet there. (As explained on our website, our company is operated from two locations; one in Oklahoma and one in Arizona.)

That email message was the first written contact involving Phillips Company and the EPA. I provided disclosure in that email message, and promised to document the disclosure in writing within 48 hours. Therefore, **The discovery of the environmental violation of *Phillips Company* WAS a self-disclosed violation.**

**3. Because our company initiated the first contacts with EPA, we believe the discovery of the environmental violation WAS a self-disclosed violation.**

Regarding self-disclosure of the violations, please note the attached document which was sent via email to EPA:

---

**From:** hp@valliant.net  
**Date:** Thursday, November 29, 2007 11:27 PM  
**To:** Acosta.Gerardo@epamail.epa.gov  
**Cc:** Centralusa@aol.com  
**Subject:** EPA compliance - CONFIDENTIAL -- INVOICES  
**Attach:**  EPA Invoice Report submitted 71129.pdf (194 KB)

---

To: Mr. Acosta, EPA

The enclosed information has been prepared for your review.

The report is attached to this email as a PDF file. In that report, I have also enclosed a summary in the form of a table, at the front of the document.

Below is a summary of actions taken and actions planned.

Please let me know if you have any questions about the information submitted, and please let me know if you can read the attached PDF file.

That document, with extensive self disclosure, was submitted to the EPA within 48 hours following the first contact between EPA and Phillips Company. Therefore, **The discovery of the details of the violation of *Phillips Company* (including copies of invoices and other business records) WAS a self-disclosed violation.**

I have prepared an online document, especially for your review. The document is available for your review at [www.phillipscompany.4t.com/KeyEvents.html](http://www.phillipscompany.4t.com/KeyEvents.html)

This document gives more details about our case, including referenced documentation. I am offering to identify and provide witnesses that can be used to establish the facts as described above, particularly regarding my claim that the first contact was made by me, to the EPA, thereby establishing self disclosure.

### **Request for action:**

I am asking that you consider the facts as described above, with the hope that you will then agree that we meet all the criteria for penalty mitigation, as listed on your web site page.

Kind regards,

Howard Phillips, General Manager  
Phillips Company



**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 3:57 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: Phillips Matter

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 03:56 PM -----

From: Jeffrey Page/R6/USEPA/US  
To: JoanB Rogers/DC/USEPA/US@EPA,  
Cc: Kristin Dunbar/R6/USEPA/US@EPA, acosta.gerardo@epa.gov  
Date: 04/24/2009 04:05 PM  
Subject: Phillips Matter

Below is the information you requested regarding the Phillips company matter. If you need more information or further clarification on an issue please contact us immediately.

The settlement offer of \$3,500.

EPA could have pursued a full penalty of \$84,500. Initially, we offered Mr. Phillips a settlement offer of \$29,200. Mr. Phillips expressed that his is a small business and he could not afford this penalty. He threatened to file bankruptcy. In attempt to be fair and take his word at face value during EPA's next settlement discussion we offered to settle for \$10,000. Again we received the same response stating he could not afford this penalty and he would file for bankruptcy. This time he was told EPA needed information from his company to prove his position and his ability to pay. He provided his tax returns and bank statements. During the review of this documentation, we learned that he listed the company's financial information as part of his personal income. We then asked him to fill out the Individual Ability to Pay form. As a last ditch effort to resolve this matter, EPA offered to settle the matter against Phillips for \$3,500. This represents a 95% reduction from the original penalty. I explained that EPA is willing to set up a payment plan with him and that the penalty could be paid out over a period of 5 years on a monthly or quarterly basis. I also explained that if he did not accept the settlement EPA would have to send out the complaint that has a penalty of \$29,200. EPA stated that we would like to have his answer in a week and if we did not hear from him, the agency will send the complaint. He stated that action will cause him to file for bankruptcy and on the last day he agreed to settle at \$3500 over a 5 year period, making two payments per

ear.

It should be noted that early in the settlement discussion Mr. Phillips counter offered. In his counter offer he wanted to settle for \$1 and required EPA not to disclose any information to the IRS.

### 3. Bankruptcy

Phillips' stated that EPA's pursuit of this enforcement action will bankrupt his company. I explained that if filing for bankruptcy, EPA could still seek injunctive relief against him. EPA refers cases to Department of Justice when a party files for bankruptcy.

Mr. Phillips has inquired about the extent at which EPA can hold him personally liable for the violations the company committed. It was made clear that the company was the party that EPA would take action against. However, after learning that he was including his businesses as income on his tax return, EPA has the option of naming him on the complaint.

### 4. Submitting the Individual Ability to Pay Report.

Phillips stated multiple times that his company does not have the ability to pay the penalty. EPA has sent him the Individual Ability to Pay Report to determine if the penalty could be paid. Further, I explained that there is a chance that this could reduce the penalty. I explained to Phillips without submitting this completed form and the refusal of the settlement offer EPA's only option is to send the complaint with a fine of \$29,200.

It was both parties intention to settle this matter; however every effort by the EPA to settle this matter was met with refusal. EPA has followed the proper procedures for assessing the violation against a company of his size and reduced the penalty accordingly, EPA has offered to settle on at least 2 different occasions. Moreover, EPA has asked Phillips to submit more information so we could try to determine the amount he could pay, but all these options were rejected.

## SBREFA Analysis

The guidance provided by EPA in the Small Business Compliance Policy provides an outline for the application for a small business to qualify for a penalty reduction.

### 1. Applicability

The policy defines a small business has either a person, corporation, partnership, or other entity that employs 100 or fewer individuals.

Phillips corporation based on the facts in the case and information on the company's website meets the definition of a small business.

[www.phillipscompany.4t.com](http://www.phillipscompany.4t.com)

### 2. How small businesses qualify for penalty reduction

EPA will eliminate or reduce the gravity component of civil penalties against small businesses based upon the following criteria:

Discovery is voluntary. The small business discovers the violation on its own before an EPA or state inspection. The violation must be identified voluntarily, and not through a monitoring or sampling requirement prescribed by statute, regulation, permit, judicial, or administrative order, or consent agreement.

Mr. Phillips is saying he has rights under SBREFA, which is incorrect due to the fact that he did not self-disclose any information to EPA, but rather we received information from an outside tip about the violations that were occurring.

### 3. Disclosure period is met.

This is not applicable to the facts in the Phillips matter, since EPA discovered the violation through an outside tip.

Violation is corrected. The business corrects the violation within the corrections period set forth below, within the shortest practicable period of time.

Mr. Phillips claims he no longer sells the product.

The guidance clearly states that all the criteria above must be met in order for a small business to qualify for a penalty reduction. Although, Mr. Phillips' company is small business, this is the only requirement his business met. EPA

discovered the violation. Further, EPA has reduced the penalty to \$3,500. Moreover, EPA has repeatedly asked Mr. Phillips to submit the Individual Ability to Pay form to determine if the business qualifies for further reductions, without this form we have no basis to make a determination of whether the company can truly pay the penalty.

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 3:44 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: Payment plan and SBREFA

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 03:43 PM -----

From: Kristin Dunbar/R6/USEPA/US  
To: "Howard Phillips" <hp@valliant.net>,  
Cc: Gerardo Acosta/R6/USEPA/US@EPA, Jeffrey Page/R6/USEPA/US@EPA, David McQuiddy/R6/USEPA/US@EPA  
Date: 04/16/2009 08:53 AM  
Subject: Re: Payment plan and SBREFA

Mr. Phillips-

In response to your questions:

1. Yes, we can arrange payments to be set-up bi-annually in January and July, until your penalty is paid in full, with your first payment due in July, 2009. The Complaint and Consent Agreement and Final Order (CCAFO) will have all details you will need in order for you to make your payments on time.

2. As it has been discussed several times during our conference calls, we have considered your company as a small business, which you can see in our substantial penalty reduction, as opposed with the full penalty that we could have pursued.

a. Yes;

b. Although we were planning to send the link with the CCAFO, below you will find a link to EPA's SBREFA for your review(<http://www.epa.gov/compliance/resources/policies/incentives/smallbusiness/sbcomppolicy.pdf>);

c. Even though SBREFA provides relief to companies (small entities) that provide to EPA their violation(s) voluntarily, we have exhausted our mitigation resources for penalty reduction in your case;

d. No.

EPA will be sending you the CCAFO in the mail shortly for your signature.

Kristin Dunbar  
Pesticides Section  
Multimedia Planning and Permitting Division  
Region 6 EPA  
Dallas, TX  
214-665-8129

kristin.dunbar@epa.gov

"In the end, we will conserve only what we love. We will love only what we understand. We will understand only what we are taught." Baba Dioum

Please consider the environment before printing this e-mail.

Re: Payment plan and SBREFA

**Re: Payment plan and SBREFA**

**Howard Phillips**

to:

Kristin Dunbar, Jeffrey Page, Gerardo Acosta

04/15/2006

Please respond to "Howard Phillips"

---

**To: Ms. Dunbar, Mr. Acosta and Mr. Page, EPA**

**Questions**

1. Would it be possible to set up the payments so that I would be required to send a check every 6 months, in January and July?
2. I recently learned about the Small Business Regulatory Enforcement Fairness Act (SBREFA), which was signed into law as Pub Law No. 104-121. During our discussions about the enforcement action, I was never aware of SBREFA. I believe that my company (small business) meets all the "Criteria for Penalty Mitigation," as described by the EPA.
  - a. Has our enforcement action included the review of SBREFA?
  - b. Does our company have any rights as provided by SBREFA?
  - c. If SBREFA is applicable to our case, what determination has been made by the EPA?
  - d. Because I was not aware of these rights, if any, during my discussions with EPA before the settlement agreement, I am wondering: Does my company have OTHER rights that have not been told to me? If so, can you please tell me what other rights I may have?

**Kind regards,**

Howard Phillips  
[www.phillipscompany.4t.com](http://www.phillipscompany.4t.com)  
"Take it to the people"

----- Original Message -----

**From:** [Dunbar.Kristin@epamail.epa.gov](mailto:Dunbar.Kristin@epamail.epa.gov)

**To:** [Howard Phillips](#)

**Cc:** [Acosta.Gerardo@epamail.epa.gov](mailto:Acosta.Gerardo@epamail.epa.gov) ; [Page.Jeffrey@epamail.epa.gov](mailto:Page.Jeffrey@epamail.epa.gov) ; [Mcquiddy.David@epamail.epa.gov](mailto:Mcquiddy.David@epamail.epa.gov)

**Sent:** Wednesday, April 15, 2009 6:31 AM

**Subject:** Payment plan

Mr. Phillips-

In order for me to finalize and to send you the Complaint and Consent Agreement and Final Order, you must agree to one of the following 3 payment options:

Once every 3 months, which would be \$175.00 per payment

Once every 6 months, which would be \$350.00 per payment

or

Once every year, which would be \$700.00 per payment

Kristin Dunbar

Pesticides Section

Multimedia Planning and Permitting Division

Region 6 EPA

Dallas, TX

14-665-8129

[dunbar.kristin@epa.gov](mailto:dunbar.kristin@epa.gov)

"In the end, we will conserve only what we love. We will love only what we understand. We will understand only what we are taught." Baba Dioum

Please consider the environment before printing this e-mail.

**Re: I will settle and I hereby agree to pay \$3,500 to settle this matter.**

Howard Phillips

to:

Jeffrey Page

04/14/2009

Cc:

Kristin Dunbar, Gerardo Acosta

Please respond to "Howard Phillips"

**To: Mr. Page (EPA attorney)**

**QUESTIONS**

1. As you know, our company is lacking operating capital. For that reason, can we opt for the

5-year payout plan that you offered?

Will the document be sent via email or hard copy? If it is sent by hard copy, please note that our company has two business addresses:

**Business office:** 10010 West Oak Ridge Drive, Sun City, Arizona 85351 Tel. 623-594-9195

**Main office and manufacturing:** PO Box 52, 311 NW Chickasaw Street, Millerton, Oklahoma 74750 Tel. 580-746-2430

I am in Arizona now. Travel days will be 4/28 and 4/29. After that, I will be in Oklahoma.

If your document is mailed before 4/20/09, the best place to send the document will be to the Business Office. Someone is on duty at that location every day, so any kind of delivery will work, including normal US mail; Priority Mail via the USPO; UPS and FEDEX.

If your document is mailed after 4/20/09, the best mailing address will be the Oklahoma address.

Howard Phillips  
[www.phillipscompany.4t.com](http://www.phillipscompany.4t.com)  
"Take it to the people"

----- Original Message -----

**From:** [Page.Jeffrey@epamail.epa.gov](mailto:Page.Jeffrey@epamail.epa.gov)

**To:** [Howard Phillips](#)

**Cc:** [Acosta.Gerardo@epamail.epa.gov](mailto:Acosta.Gerardo@epamail.epa.gov) ; [Dunbar.Kristin@epamail.epa.gov](mailto:Dunbar.Kristin@epamail.epa.gov)

**Sent:** Thursday, April 09, 2009 8:49 AM

**Subject:** Re: I will settle and I hereby agree to pay \$3,500 to settle this matter.

Mr. Phillips,

EPA appreciates your decision to settle this matter. EPA will draft a consent agreement and Final Order that we will send to you for your review and signature. This document will include payment instructions and will state that the matter is resolved. EPA also signs this document.

Regards,  
Jeffrey Page

I will settle and I hereby agree to pay \$3,500 to settle this matter.

Howard  
Phillips

to: Jeffrey Page, Gerardo Acosta, Kristin  
Dunbar

04/09/2009

Please respond to "Howard Phillips"

---

To: EPA

Attention: Mr. Acosta, Mr. Page and Ms. Dunbar

Date: Thursday, April 9, 2009

Agreement to settle on your terms: My email sent last night (4/8/2009), was a message that our company will settle and we hereby agree to pay what you have offered, \$3,500, an amount equal to 34% of the present net worth of our company. I plan to pay by check. Please send payment instructions and the necessary paperwork.

Question: When might I receive something from you saying that this matter has been settled and concluded? I will need that, for use in the credit market, with a view toward getting a bridge loan for temporary operating capital.

Respectfully submitted,

Howard Phillips, General Manager  
**Phillips Company**  
[www.phillipscompany.4t.com](http://www.phillipscompany.4t.com)



**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 3:30 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: I will settle and I hereby agree to pay \$3,500 to settle this matter.

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 03:29 PM -----

From: Jeffrey Page/R6/USEPA/US  
To: "Howard Phillips" <hp@valliant.net>  
Cc: Gerardo Acosta/R6/USEPA/US@EPA, Kristin Dunbar/R6/USEPA/US@EPA  
Date: 04/09/2009 10:49 AM  
Subject: Re: I will settle and I hereby agree to pay \$3,500 to settle this matter.

Mr. Phillips,

EPA appreciates your decision to settle this matter. EPA will draft a consent agreement and Final Order that we will send to you for your review and signature. This document will include payment instructions and will state that the matter is resolved. EPA also signs this document.

Regards,  
Jeffrey Page

I will settle and I hereby agree to pay \$3,500 to settle this matter.

**I will settle and I hereby agree to pay \$3,500 to settle this matter.**

**Howard Phillips**

to: Jeffrey Page, Gerardo Acosta, Kristin Dunbar

04/09/2009

Please respond to "Howard Phillips"

To: EPA

Attention: Mr. Acosta, Mr. Page and Ms. Dunbar

Date: Thursday, April 9, 2009

Agreement to settle on your terms: My email sent last night (4/8/2009), was a message that our company will settle and we hereby agree to pay what you have offered, \$3,500, an amount equal to 34% of the present net worth of our company. I plan to pay by check. Please send payment instructions and the necessary paperwork.

Question: When might I receive something from you saying that this matter has been settled and concluded? I will need that, for use in the credit market, with a view toward getting a bridge loan for temporary operating capital.

Respectfully submitted,

Howard Phillips, General Manager  
**Phillips Company**  
[www.phillipscompany.4t.com](http://www.phillipscompany.4t.com)

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 3:29 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: I will settle and I hereby agree to pay \$3,500 to settle this matter.

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 03:28 PM -----

From: "Howard Phillips" <hp@valiant.net>  
To: Kristin Dunbar/R6/USEPA/US@EPA, Jeffrey Page/R6/USEPA/US@EPA, Gerardo Acosta/R6/USEPA/US@EPA,  
Date: 04/09/2009 12:53 AM  
Subject: I will settle and I hereby agree to pay \$3,500 to settle this matter.

---

**To:** EPA  
**Attention:** Mr. Acosta, Mr. Page and Ms. Dunbar  
**Date:** Wednesday, April 8, 2009

**Agreement to settle on your terms:** Our company will settle and we hereby agree to pay what you have offered, an amount equal to 34% of the present net worth of our company. I plan to pay by check. Please send payment instructions and the necessary paperwork.

---

**Exorbitant charge:** I feel that a fine of 34% of the present worth of our company is an exorbitant charge for such a minor violation (registration oversight). A fine of 34% of the present worth of our company is an especially exorbitant charge for a company as small as ours. Moreover, a fine of 34% of the present worth of ANY company (large or small) is an especially exorbitant charge for such a minor violation.

**Exorbitant impact:** An infraction happened. You are BIG and have your rules and your legal teams and many, many employees. We are a small company with some very good ideas, new inventions and new products that we hoped would make a positive difference in people's lives. Our company goal was to develop new life-saving products and then Take It to the People. Now, we will probably have to give up on that goal -- the future is uncertain. We have been brought down by the EPA. For me, this is a sad day.

**Our previous offer to settle this matter:** Yesterday, I offered to settle this enforcement action and pay a fine equal to 22.3% of present our company's net worth. That offer was refused by the EPA. The reason I made that offer was to save the company from going out of business. Today, the reason for my agreeing to your terms (fine of 34% of the present company net worth) is a different reason.

**Reason why our company must agree to settle on your terms:** My company's reason for agreeing to your terms (fine of 34% of the present company net worth) is that EPA has intimidated me and led me to believe that EPA will take my personal assets, even though our company (not me as an individual) has been accused of an infraction and our company operates as an LLC. I am 68 years old and in retirement. I have some savings because of being frugal over a lifetime. And I have a small life insurance policy for burial. I can not afford to put my personal assets at risk -- a possibility that EPA has used to effectively intimidate me.

**I feel intimidated by the EPA:** You have told me on phone calls that my personal assets may be at risk. Yet, you will not clarify your legal rights and your intent. In an email message from me to your EPA attorney (Mr. Page), I asked for clear answers:

I am disappointed that you (EPA attorney) can not answer simple questions that are absolutely KEY to the enforcement action being conducted by EPA. You IMPLY that EPA perhaps has the legal right and the intent to NOT ALLOW MY INDIVIDUAL ASSETS TO BE PROTECTED in this matter, even if our company does NOT seek bankruptcy protection. Assuming that ALL the business financial and business tax information that I have provided to EPA is accurate and complete, I have two simple questions for you, Mr. Page:

1. Does EPA have the legal right to take my personal assets? Yes or no?
2. Does EPA have the INTENT to take my personal assets? Yes or no?

I am disappointed that you can not answer these simple questions.

7. You IMPLY that EPA perhaps has the legal right and the intent to NOT ALLOW MY INDIVIDUAL ASSETS TO BE PROTECTED in this matter, even if our company DOES seek Chapter-7 bankruptcy protection. Assuming that ALL the business financial and business tax information that I have provided to EPA is accurate and complete, I have two simple questions for you, Mr. Page:

1. Does EPA have the legal right to take my personal assets? Yes or no?
2. Does EPA have the INTENT to take my personal assets? Yes or no?

The reply from the EPA attorney did not provide clear, honest answers, thereby leaving me with feelings of uncertainty and intimidation. I have registered in writing my disappointment in EPA's lack of clear, honest answers.

You are exercising your authority without giving clear, honest answers about what legal authority the government has to take my personal assets; and you have given me only until tomorrow to settle or face the threat of uncertain action by EPA and the Department of Justice. I feel intimidated, apprehensive and disheartened. Because of these feelings, I am yielding to your demand to pay the fine of 34% of the present company net worth.

Discussion: The purpose of our LLC was to conduct business separately and to protect personal assets. But you are BIG...we are small...and perhaps you can make me personally responsible for this fine. I can't take that risk.

If you had not intimidated me with implied threats regarding the government taking my personal assets, I would have been inclined to seek bankruptcy for the company and deal with future government actions. I believe the Department of Justice might be inclined to be lenient for a first time violation where no harm was done by the Room Shield products; no profit was made by anyone (no financial gain), we have been cooperative with the EPA, and manufacturing of the products was stopped immediately after we were contacted by the EPA. A warning letter in the file would have been sufficient; because nothing more was accomplished by the fine that has put our company out of the business of manufacturing products to save lives.

I want to believe that you (EPA employees) have done your best and been fair. I am still trying to believe that. I do appreciate the fact that the fine was lowered to an amount equal to 34% of the present net worth of our company.

Please in the future, consider that small businesses do not have legal teams and regulatory-affairs staffs that can investigate all the rules and regulations. Warning letters and help from the EPA in understanding certain rules could perhaps help small not-for-profit businesses find cures for many problems.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Howard Phillips", with a stylized flourish at the end.

Howard Phillips, General Manager  
**Phillips Company**  
[www.phillipscompany.4t.com](http://www.phillipscompany.4t.com)

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 3:27 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: Can we settle the enforcement action, if we give EPA all the money we have (except for bankruptcy expenses)?

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 03:26 PM -----

From: "Howard Phillips" <hp@valliant.net>  
To: Kristin Dunbar/R6/USEPA/US@EPA, Jeffrey Page/R6/USEPA/US@EPA, Gerardo Acosta/R6/USEPA/US@EPA,  
Date: 04/07/2009 02:29 PM  
Subject: Can we settle the enforcement action, if we give EPA all the money we have (except for bankruptcy expenses)?

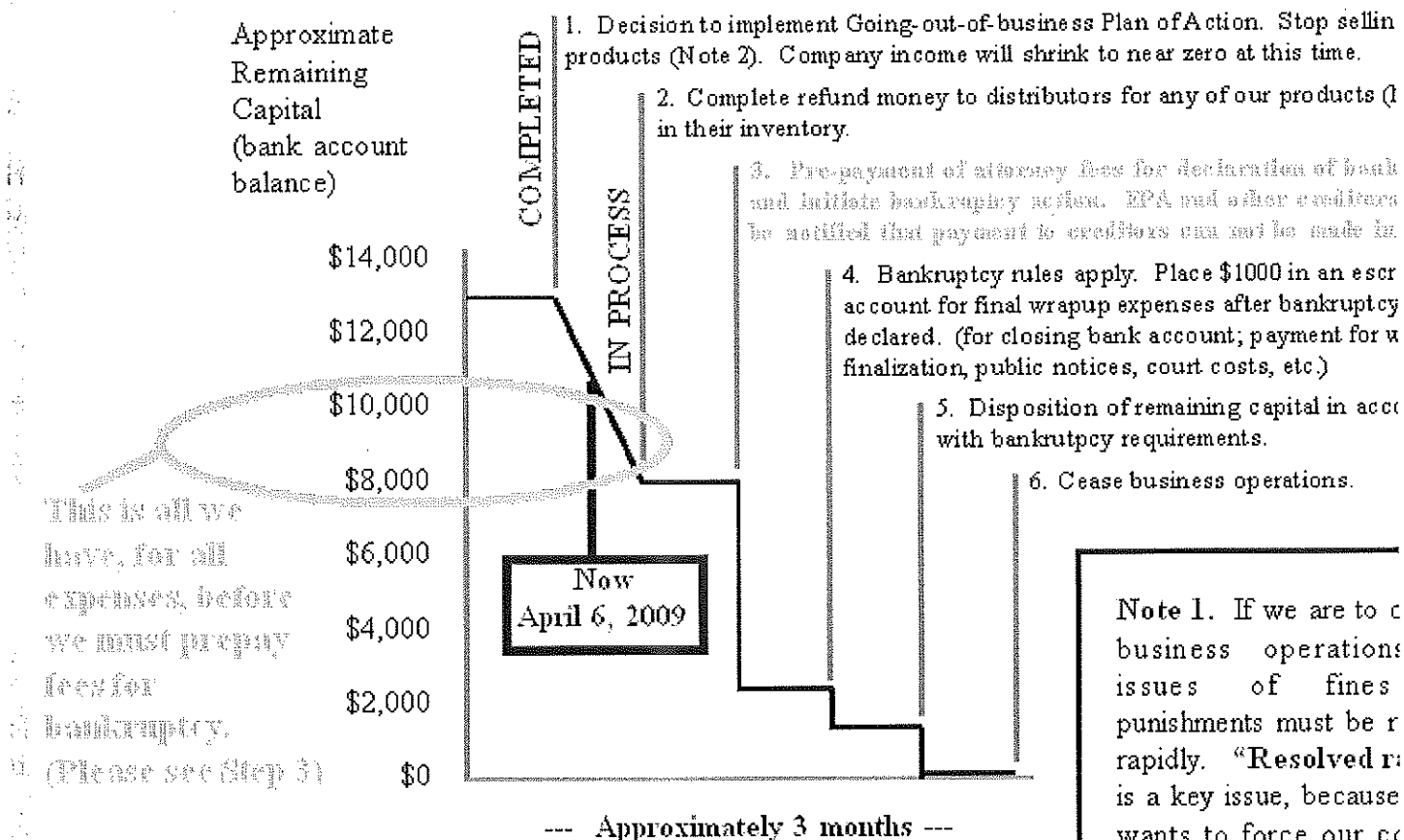
---

**To: Mr. Page, Mr. Acosta and Ms. Dunbar -- EPA**

**Thank you for your consideration during our phone call this morning.**

**Can we settle the enforcement action, if we give EPA all the money we have (except for bankruptcy expenses)?**

**Here is our current financial situation, and the plan we are following, step by step, toward bankruptcy:**



**Note 2.** "products" means our line of pharmaceutical products. We are not, and have not manufactured or sold StaphWash Room Shield, Strivector, or any other "pesticide" product since we were first contacted by the EPA (11/2007).

The net worth of our company is approximately \$10,300.

When our net worth drops to \$8,000 we must then use the remaining money to pay for bankruptcy legal fees and other costs.

That means that we have only  $(\$10,300 - \$8,000) = \$2,300$  remaining. Our company is offering all that we have (\$2,300) to the EPA to settle the enforcement action. \$2,300 is 22.3% of the present value of the company.

We have no choice but to offer this and hope that you will accept our offer. Unless the enforcement action is concluded soon, we will be forced into bankruptcy. Our company is a good one. It has produced life-saving products and we want to prevent bankruptcy and give the company a chance for survival. The only path to survival of our company is to settle the enforcement action and then turn to the credit markets for bridge-loan capital.

Please scroll down to see the reply to key points in the email from Mr. Page.

Sincerely,

Howard Phillips  
[www.phillipscompany.4t.com](http://www.phillipscompany.4t.com)  
"Take it to the people"

---

----- Original Message -----

**From:** [Page.Jeffrey@epamail.epa.gov](mailto:Page.Jeffrey@epamail.epa.gov)  
**To:** Howard Phillips  
**Cc:** [Acosta.Gerardo@epamail.epa.gov](mailto:Acosta.Gerardo@epamail.epa.gov) ; [Dunbar.Kristin@epamail.epa.gov](mailto:Dunbar.Kristin@epamail.epa.gov)  
**Sent:** Monday, April 06, 2009 11:41 AM  
**Subject:** Phillips call April 2, 2009 at 11:00 am, ( I apologize if you received this Friday.)

Mr. Phillips,

The purpose of this email is to summarize our conversation. On April 2, 2009 you received two phone calls from the Environmental Protection Agency, Region 6. During the first call you were offered the opportunity to settle the matter for \$3,500. My phone call was a follow up to that call to better explain the circumstances.

When I first began our call, I made it clear that I was an attorney and that if you felt uncomfortable talking without legal representation we could postpone the call. Our conversation began with me outlining EPA's position. You then said there were problems with the line and I offered to call you back on another line. When I returned the call, you then asked if you could record the conversation. After seeking advice from a senior attorney, I explained that I was unsure of EPA's policy regarding recording of conversations and offered to call you back as soon as I had a definitive answer. You thought that was unnecessary, offered to stop the recording and the conversation proceeded.

We discussed the history of the case and the FIFRA violations. I explained that the original penalty assessed against your company was \$84,500. However, EPA used discretion and reduced the penalty to \$29,200. After presenting you with the penalty and your submission of some documents EPA offered to settle the matter for \$10,000. Again, you expressed difficulty in paying this amount and submitted your own settlement offer for \$40. **EPA decided your settlement offer was not adequate in light of the types of violations your company committed and the payment of a penalty by one of your distributors after it distributed your product.**

Your points have merit.

1. I appreciate very much EPA's consideration because we are a small company, at the point of bankruptcy and therefore having a limitation on our ability to pay fines.
2. You make a good point about the fine to be paid by one of our distributors. The settlement amount for that fine is \$1,500 (settlement amount agreed to by EPA and Central USA Distributors, Inc. )
3. Our company is offering \$2,300 which is 53% higher than the fine to be paid by the distributor for the same violation (selling "pesticide" not registered with the EPA).

During the course of the call we discussed three options

1. The settlement offer of \$3,500.

EPA offered to settle the matter against you for \$3,500. I explained that EPA is willing to set up a payment plan with you and that the penalty could be paid out for 5 years on a monthly or quarterly basis. I also explained that if you did not accept the settlement we would have to send out the complaint that has a penalty of \$29,200. EPA stated that we would like to have your answer in a week and if we did not hear from you we will send the complaint.

2. Bankruptcy



You stated that EPA's pursuit of this enforcement action will bankrupt your company. I explained that if you filed for bankruptcy, EPA could still seek injunctive relief against you. EPA refers cases to Department of Justice when a party files for bankruptcy.

**3. Submitting the Individual Ability to Pay Report.**

You have stated multiple times that company does not have the ability to pay the penalty. EPA has sent you the Individual Ability to Pay Report to determine if the penalty could be paid. Further, I explained that there is a chance that this could reduce the penalty but you refused to submit it. Without you submitting this completed form and your refusal of the settlement offer our only option is to send the complaint with a fine of \$29,200.

**As EPA has explained to me, the purpose of the Individual Ability to Pay Report is to determine the ability for me (individual) to pay from my personal assets. Please consider the following:**

**1. I have never claimed that, as an individual, I could not pay the fine amounts. All I have claimed is that the company does not have the ability to pay excessive fine amounts (exceeding 30% of the company net worth) for violations by the company, having to do with company products.**

**2. I hereby declare that, as an individual, my individual net assets ARE GREATER than the fine amounts. Therefore, as an individual, there is no issue or disagreement about the "Individual Ability to Pay."**

**3. Because of #1 and #2 above, I hope you will agree that focus on the Individual Ability to Pay is focus on a moot point for both the EPA and for me as an individual.**

It was both parties intention to settle this matter; however every effort by the EPA to settle this matter was met with refusal. EPA has followed the proper procedures for assessing the violation against a company of your size and reduced the penalty accordingly, EPA has offered to settle on a least 2 different occasions. Moreover, EPA has asked you to submit more information so we could try to determine the amount you could pay, but all these options were rejected.

Regards,  
Jeffrey Page

**We sense that EPA may have concerns about the accuracy of the net worth of our company, as reported to you above. If EPA has concerns about this, we would accept settlement terms which provide for follow-up action by the EPA with additional penalties -- if we are found to have provided incorrect company financial information. We are certain that our company financial status, as reported to you, is truthful and complete.**

**In summary, our appeal is that you will accept our offer to settle this matter. Unless the enforcement action is concluded soon, we will be forced into bankruptcy. Can we settle the enforcement action, if we give EPA all the money we have (except for bankruptcy expenses)?**

**Sincerely,**

Howard Phillips  
[www.phillipscompany.4t.com](http://www.phillipscompany.4t.com)

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 3:11 PM  
**To:** Acosta, Gerardo  
**Subject:** EPA-R6-2017-009480

attachment was confidential.

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 03:10 PM -----

From: "Howard Phillips" <hp@valliant.net>  
To: Jeffrey Page/R6/USEPA/US@EPA, Gerardo Acosta/R6/USEPA/US@EPA, Kristin Dunbar/R6/USEPA/US@EPA,  
Date: 04/06/2009 01:00 PM  
Subject:

**To: EPA**

**Ms. Dunbar**

**Mr. Acosta**

**Mr. Page**

**1. The ATTACHED PDF DOCUMENT provides the financial status of Phillips Company as of April 6, 2009.**

**The net worth of Phillips Company on April 6, 2009 is approximately \$10,370.**

**2.. We have stopped manufacturing all products. We are no longer sufficiently capitalized to sustain manufacturing operations. Our primary distributors and secondary distributors have been notified**

3. In response to the notification to distributors, distributors have begun returning product inventory for refunds.

4. We ask that EPA, acting in good faith, take action to conclude the enforcement action rapidly. This matter has hurt our company for more than 14 months. We are near bankruptcy status. We want to continue our company business. But, if the enforcement action is not concluded now, we can not continue. We have been forced to cease being a manufacturing company as of April 3, 2009.

When asked, at some later date, we want to be remembered as a company that gave full notice to the EPA regarding the effects of the seemingly-endless time (more than 14 months) required for EPA to conclude the enforcement action.

Sincerely,

Howard Phillips  
[www.phillipscompany.4t.com](http://www.phillipscompany.4t.com)

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 3:09 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: Phillips call April 2, 2009 at 11:00 am

EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 03:05 PM -----

From: Jeffrey Page/R6/USEPA/US  
To: hp@vallant.net,  
Cc: Gerardo Acosta/R6/USEPA/US@EPA, Kristin Dunbar/R6/USEPA/US@EPA  
Date: 04/03/2009 02:47 PM  
Subject: Phillips call April 2, 2009 at 11:00 am

Mr. Phillips,

The purpose of this email is to summarize our conversation. On April 2, 2009 you received two phone calls from the Environmental Protection Agency, Region 6. During the first call you were offered the opportunity to settle the matter for \$3,500. My phone call was a follow up to that call to better explain the circumstances.

When I first began our call, I made it clear that I was an attorney and that if you felt uncomfortable talking without legal representation we could postpone the call. Our conversation began with me outlining EPA's position. You then said there were problems with the line and I offered to call you back on another line. When I returned the call, you then asked if you could record the conversation. After seeking advice from a senior attorney, I explained that I was unsure of EPA's policy regarding recording of conversations and offered to call you back as soon as I had a definitive answer. You thought that was unnecessary, offered to stop the recording and the conversation proceeded.

We discussed the history of the case and the FIFRA violations. I explained that the original penalty assessed against your company was \$84,500. However, EPA used discretion and reduced the penalty to \$29,200. After presenting you with the penalty and your submission of some documents EPA offered to settle the matter for \$10,000. Again, you expressed difficulty in paying this amount and submitted your own settlement offer for \$40. EPA decided your settlement offer was not adequate in light of the types of violations your company committed and the payment of a penalty by one of your distributors after it distributed your product.

During the course of the call we discussed three options

1. The settlement offer of \$3,500.

EPA offered to settle the matter against you for \$3,500. I explained that EPA is willing to set up a payment plan with you and that the penalty could be paid out for 5 years on a monthly or quarterly basis. I also explained that if you did not accept the settlement we would have to send out the complaint that has a penalty of \$29,200. EPA stated that we would like to have your answer in a week and if we did not hear from you we will send the complaint.

2. Bankruptcy

You stated that EPA's pursuit of this enforcement action will bankrupt your company. I explained that if you filed for bankruptcy, EPA could still seek injunctive relief against you. EPA refers cases to Department of Justice when a party files for bankruptcy.

3. Submitting the Individual Ability to Pay Report.

You have stated multiple times that company does not have the ability to pay the penalty. EPA has sent you the Individual Ability to Pay Report to determine if the penalty could be paid. Further, I explained that there is a chance that this could reduce the penalty but you refused to submit it. Without you submitting this completed form and your refusal of the settlement offer our only option is to send the complaint with a fine of \$29,200.

It was both parties intention to settle this matter; however every effort by the EPA to settle this matter was met with refusal. EPA has followed the proper procedures for assessing the violation against a company of your size and reduced the penalty accordingly, EPA has offered to settle on a least 2 different occasions. Moreover, EPA has asked you to submit more information so we could try to determine the amount you could pay, but all these options were rejected.

Regards,  
Jeffrey Page

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**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 2:57 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: Disappointments based on your phone call to me earlier today

FOIA - EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 02:56 PM -----

From: "Howard Phillips" <hp@valliant.net>  
To: Jeffrey Page/R6/USEPA/US@EPA,  
Cc: Gerardo Acosta/R6/USEPA/US@EPA  
Date: 04/02/2009 04:36 PM  
Subject: Disappointments based on your phone call to me earlier today

---

**To: Mr. Jeffery Page, EPA attorney**

**Thank you for your phone call this morning. Many constructive things were covered in that phone call, but I am very deeply disappointed in you, acting as a Government attorney, for the following reasons:**

- 1. I am disappointed that you plan to take this matter to DOJ for additional action, but WITHOUT a deposition from me so that legal action can consider both sides of this matter.**
- 2. You would not allow me to record the conversation. On that conversation I was not represented by legal counsel. You ARE legal counsel for the EPA. I deserve the right to provide information about that conversation to MY legal counsel, if I choose at a later date. You should have allowed me to record that conversation, which (as I told you) you were welcome to use as an equivalent deposition in the future, if needed.**
- 3. You could not seem to arrange for YOU to record the conversation, as I requested. EPA has recorded my telephone conversation in the past. Mr. Acosta did that. I was disappointed**

that you, as EPA legal counsel, could not or would not record the conversation. If it is time for an EPA attorney (you) to get involved, then it is time to document conversations of an evidentiary value.

4. I have submitted three sets of documentation to the EPA regarding the matters you wanted to discuss when you phoned me earlier today. You did not have the documentation available. You had not read the documentation. I had to read part of it to you on that phone call. You were not prepared to discuss the key points of the matter being enforced by the EPA. I was disappointed in your lack of preparation for that phone call -- especially since you had plenty of time to prepare, because the phone call was at the time of your choosing, not mine.

5. I was disappointed that you do not know, and have not learned the law, regarding a very key point in the EPA's handling of this case. Here are points covered during your conversation with me:

1. Reporting business income on Schedule-C is an IRS allowed procedure.
2. It is not the same as "co-mingling of assets."
3. The greatest amount of money that I (individual) have at risk is the amount of my personal investment in the LLC.
4. The most that the EPA can take is the net assets of the company. EPA can not take my pension income. EPA can not take my social security income. EPA can not take my life insurance cash value. EPA can not take my retirement savings. EPA can not take my personal assets, including my home and my automobile. I don't receive an income from Phillips Company, so that is not an issue. EPA should be concerned about the company assets; and not be concerned about my personal assets.
5. I should ask my contact at the EPA to confirm this with EPA's legal staff and the EPA's tax advisor.

Those points have been discussed with the EPA in past conversations and I have submitted this information in writing (my most recent document submission, March 27th). Please note #5 above. I have asked EPA to tell me one simple thing: Are points 1 - 4 (above) correct from a legal standpoint? Yes or no? I am disappointed that you (EPA attorney) can not, did not, and will not answer that simple question.

6. I am disappointed that you (EPA attorney) can not answer simple questions that are absolutely KEY to the enforcement action being conducted by EPA. You IMPLY that EPA perhaps has the legal right and the intent to NOT ALLOW MY INDIVIDUAL ASSETS TO BE PROTECTED in this matter, even if our company does NOT seek bankruptcy protection. Assuming that ALL the business financial and business tax information that I have provided to EPA is accurate and complete, I have two simple questions for you, Mr. Page:

1. Does EPA have the legal right to take my personal assets? Yes or no?
2. Does EPA have the INTENT to take my personal assets? Yes or no?

I am disappointed that you can not answer these simple questions.

7. You IMPLY that EPA perhaps has the legal right and the intent to NOT ALLOW MY INDIVIDUAL ASSETS TO BE PROTECTED in this matter, even if our company DOES seek Chapter-7 bankruptcy protection. Assuming that ALL the business financial and business tax information that I have provided to EPA is accurate and complete, I have two simple questions for you, Mr. Page:

1. Does EPA have the legal right to take my personal assets? Yes or no?
2. Does EPA have the INTENT to take my personal assets? Yes or no?

I am disappointed that you can not answer these simple questions.

8. I am disappointed that you are not aware of my appeal for fair treatment, considering the fact that our small company is 7 million times smaller than the average company in our field (pharmaceutical manufacturing).

<u>Company</u>	<u>Capitalization</u>	<u>Penalty</u>	<u>Penalty, % of net worth</u>
Pfizer	\$175,000,000,000	\$29,200	.00001669%
Johnson & Johnson	\$148,000,000,000	\$29,200	.00001973%
Merck	\$118,000,000,000	\$29,200	.00002475%
GlaxoSmithKline	\$110,000,000,000	\$29,200	.00002655%
Novartis	\$91,000,000,000	\$29,200	.00003209%
Amgen	\$66,000,000,000	\$29,200	.00004424%
Eli Lilly	\$64,000,000,000	\$29,200	.00004563%
AstraZeneca	\$59,000,000,000	\$29,200	.00004949%
Abbot Labs	\$54,000,000,000	\$29,200	.00005407%
Wyeth	\$48,000,000,000	\$29,200	.00006083%
Average large Co.	\$93,300,000,000.00	\$29,200	.00003130%
Phillips Company	\$13,000.00	\$29,200	224.61538462%
<p>\$ .00407 = penalty Phillips Company would pay if the amount were the same % of company net worth for small and large corporations.</p>			

9. I am disappointed that you were not aware (on our telephone call) that ending the enforcement action soon is the ONLY path forward that will allow us to recapitalize the company and continue normal operation. I am disappointed that you had not read our documentation on this case, which highlights the following:



**Note 1.** If we are to continue business operations, the issues of fines and punishments must be resolved rapidly. "Resolved rapidly" is a key issue, because if EPA wants to force our company out of business, that will happen if EPA does nothing to rapidly resolve these issues.

This appeal has been repeated 18 times in documents that I have submitted to the EPA regarding this enforcement action. I was awestruck and stunned when you, in our conversation this morning, offered a "5 year payout plan" to pay the fine. Mr. Page, I appreciate the kindness and generous consideration of the EPA on this matter, but I am disappointed that the EPA does not understand and accept a simple fact: The financial decline of our company during this seemingly-endless (16 months and continuing) enforcement action is a direct result of the inability of our company to recapitalize because of the added financial risk (as a potential borrower of capital), and if we are to continue business operations, the issues of fines and punishments must be resolved rapidly. "Resolved rapidly" is a key issue, because if EPA wants to force our company out of business, that will happen if EPA does nothing to rapidly resolve these issues.

That fact seems easy to understand. Yet, the EPA shows ever indication that EPA can not (or will not) understand that. I am deeply disappointed that you, too, seem unable to understand that.

I am reminded of the recent event in Dallas involving an NBA player who is, I believe a citizen of the Dallas area. When a law officer could not and would not try to understand a citizen's truthful and calm statement to the officer, "My mother-in-law is dying at the hospital." The law officer wouldn't listen. He wouldn't respond in a sensible way. In the end, the family member died in the hospital without seeing the members of her family who were trying to get to the hospital. It seems to me that the EPA enforcement action is driving my company out of business, and I am trying to explain that, and absolutely nobody at the EPA wants to understand the truth. That does indeed disappoint me, because I have tried my best to get EPA to understand.

2. I very much appreciate EPA reducing the planned fine from \$29,200 to an offer to settle for \$10,000 and \$3,500 (today's offer, via telephone). But I am disappointed that EPA does not understand that agreement to that would IMMEDIATELY force our company into bankruptcy for

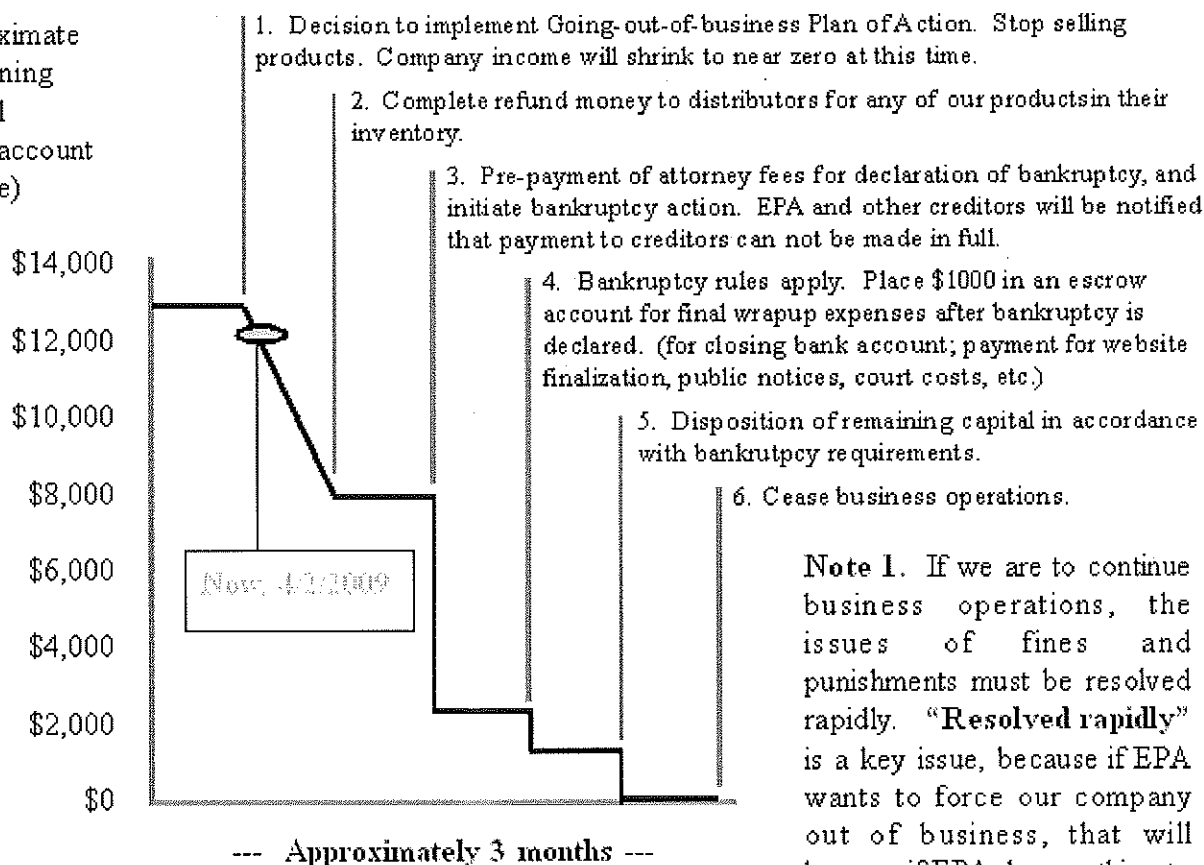
the following reasons:

a. A fine of \$3,500 is approximately 30% of our net worth. Our net value continues to decline, day by day, as we pay normal bills (telephone, supplies, refunds, etc.). I estimate that our net worth is less than \$12,000 (whereas in recent documents, at an earlier time, it was stated as \$13,000). A fine of \$3,500 means more than the fact that it is 30% of our net worth. That is also approximately 30% of our operating capital. Although a generous offer by the EPA, the past 16 months of enforcement action has brought us to the unfortunate situation that we literally can not afford to accept the settlement offer. If we did accept that fine amount, that action (\$3,500 obligation) would be exactly equivalent to a forced bankruptcy. Bankruptcy would be our ONLY option because we could not generate income by manufacturing and selling products; and there would not be enough operating capital (operating TIME) to arrange for a bank or investor loan to capitalize the company. I WISH we could accept EPA's \$3,500 offer to settle, because it is a kind and generous offer and quick settlement is the ONLY way for our company to survive. But, it is unaffordable. We must keep \$6000 sequestered (earmarked) for use in paying legal fees for bankruptcy proceedings.

b. There is also an appeal for EPA to consider the fairness of the offer. Although it is kind and generous, a fine of \$3,500 is approximately 30% of our net worth. In your heart of hearts, Mr. Page, do you think this is fair? 30% of net value and 30% of operating capital is a big amount for a small, small company. Would a larger company be fined 30% of their total net value for such a minor, unintentional infraction which harmed no one and caused no harm to the environment?

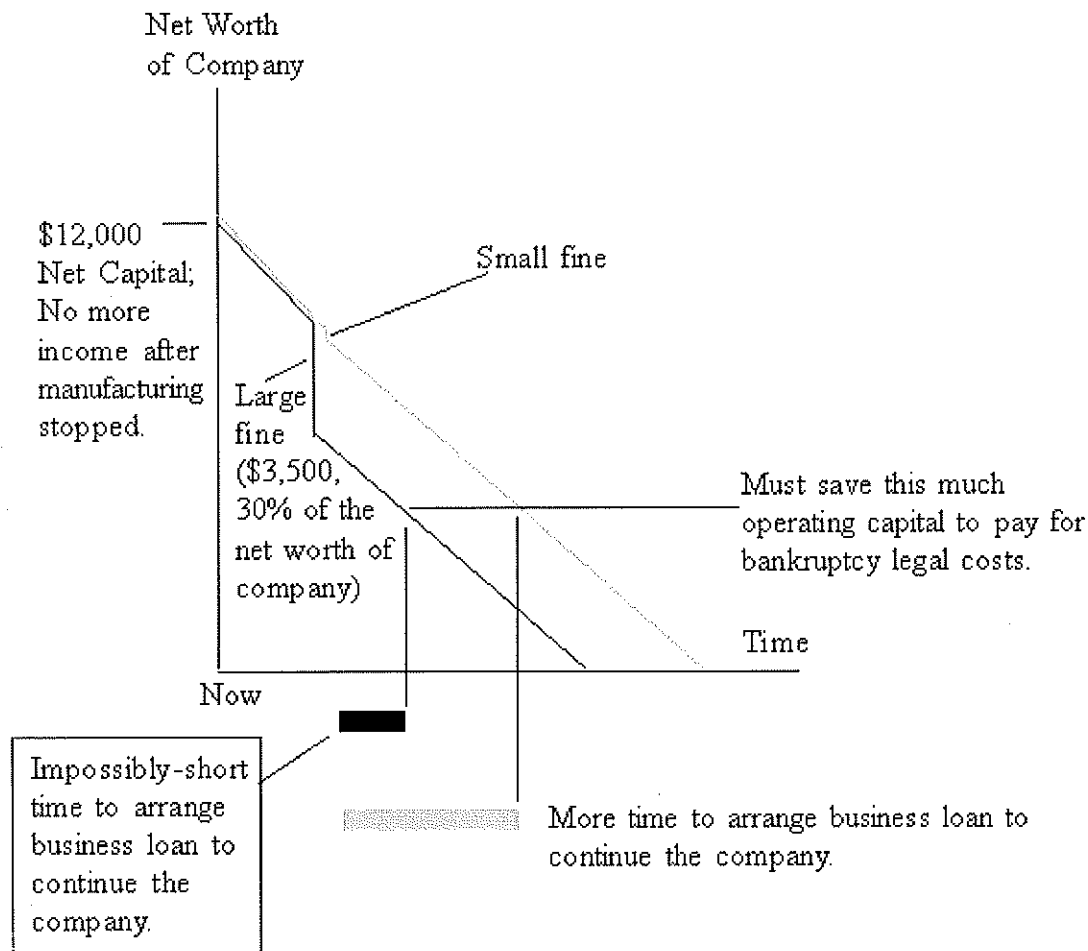
1. I am disappointed that company financial condition is not being taken into account. If it were being taken into account, then EPA would realize that a fine of 30% of our net worth is impossible for us to accept. Here is my best effort to explain our financial condition:

Approximate  
Remaining  
Capital  
(bank account  
balance)



**Note 1.** If we are to continue business operations, the issues of fines and punishments must be resolved rapidly. **"Resolved rapidly"** is a key issue, because if EPA wants to force our company out of business, that will happen if EPA does nothing to rapidly resolve these issues.

Item 1 (above figure) has already been done verbally (telephone) and will be confirmed in writing within 48 hours to our primary and secondary distributors.



As shown by the **blue line** above, we simply can NOT accept the kind and generous offer of a \$3,500 settlement fee, because that would be equivalent to a decision that would drive our company IMMEDIATELY into EPA-forced bankruptcy. That is because, as shown above, we would be left with too little operating capital (operating time left) and therefore an impossibly-short time to possibly arrange a bridge loan to continue the company and possibly restart manufacturing.

As shown by the **green line** above, a smaller fine amount is the ONLY scenario that might allow us enough operating time to possibly arrange a bridge loan to continue the company and possibly restart manufacturing.

I am disappointed that I could not seem to communicate this important situation to you on our phone call earlier today.

2. I am deeply disappointed that you requested me to ask other interested parties to NOT email EPA about this enforcement action matter. PFD is part of my company's primary/secondary distributor network. PFD is an independent company, not controlled by my company. PFD deserved to know the details about why my company is being driven out of business by EPA's 16-month non-conclusion of this matter. PFD will probably also be driven

out of business when my company fails as a manufacturing company, because I believe we are the only source of products to PFD. If I did NOT make PFD (and other strategic alliances) fully aware of the impending closure of our manufacturing, I suspect that I might have been guilty of fraud -- by representing my intent in a way that was not accurate and in a way that could harm PFD. As I recall, that is why Ken Lay (Enron) died in prison -- for not representing Enron's status truthfully and therefore causing damage to investors through an act of fraud. If I am correct, then I am disappointed in you for requesting me to not provide full disclosure to my strategic alliances and asking them to NOT communicate with the EPA on matters of vital significance to them. Your rationale was "these people are just individual employees of the EPA trying to do their job, and they shouldn't be receiving email messages like that." That is a bankrupt notion and I am disappointed in you for not realizing that these EPA employees (including you) are the ONLY PEOPLE IN THE WORLD that can take action to allow my company and other strategic alliances to stay in business.

13. I am deeply disappointed in you because you interrupted me MANY times, seemingly not interested in the important facts surrounding the reasons for your telephone call to me. You did not have my previously-submitted documentation; you clearly had not reviewed that documentation in sufficient detail, and yet you had difficulty in allowing me to provide the background and context for my replies to matters that YOU wanted to discuss.

Respectfully,

Howard Phillips

[www.phillipscompany.4t.com](http://www.phillipscompany.4t.com)

"Take it to the people"

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 2:45 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: Phillips Company, Millerton, OK

FOIA - EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
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----- Forwarded by Gerardo Acosta/R6/USEPA/US on 07/31/2017 02:43 PM -----

From: PhyllisFerris@aol.com  
To: Gerardo Acosta/R6/USEPA/US@EPA,  
Date: 04/02/2009 06:52 AM  
Subject: Phillips Company, Millerton, OK

---

To Mr. Acosta, EPA

In support of Phillips Company's efforts to obtain an affordable fine from EPA, I respectfully request your consideration in granting the request for a "Written Warning" rather than a \$10,000 fine.

Phillips Company is a small, start-up, not-for profit business--not the highly successful company that it may seem to be at this point. That is the Company we plan it to be in the future.

Our products are high quality and high performance. Why should our sales not be skyrocketing? We need advertising funds necessary to commercialize these products. We have multiple products to launch. We need to get the word out to the people.

At EPA you deal with huge companies who may consider \$10,000 pocket change, but to a small business, it can be devastating.

Yesterday, I was given notice by Phillips Company of its intent to close the manufacturing site in Oklahoma and file bankruptcy. This will be a huge mistake and a major loss of these products that can help so many. I hope this is not a definite decision.

The impact of the closing of the manufacturing site to my business is also dramatic. **This will close my business as a distributor and the loss of my investment.**

Thank you for your consideration

Best Regards!

Phyllis Ferris, President  
Phyllis Ferris Distribution Service, Inc.  
321-267-6365

---

New Low Prices on Dell Laptops - Starting at \$399

**From:** Acosta, Gerardo  
**Sent:** Monday, July 31, 2017 2:43 PM  
**To:** Acosta, Gerardo  
**Subject:** Fw: Phillips Company

FOIA - EPA-R6-2017-009480

Regards,

Gerardo Acosta,  
Coordinator, Pesticides Enforcement  
US EPA Region VI  
1445 Ross Avenue (6PD-P)  
Dallas, Texas 75202-2733  
214.665.8042 (phone)  
214.665.7263 (fax)  
acosta.gerardo@epa.gov

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From: PhyllisFerris@aol.com  
To: Gerardo Acosta/R6/USEPA/US@EPA,  
Date: 04/01/2009 11:53 PM  
Subject: Phillips Company

To Ms. Dunbar, EPA

In support of Phillips Company's efforts to obtain an affordable fine from EPA, I respectfully request your consideration in granting the request for a "Written Warning" rather than a \$10,000 fine.

Phillips Company is a small, start-up, not-for profit business--not the highly successful company that it may seem to be at this point. That is the Company we plan it to be in the future.

Our products are high quality and high performance. Why should our sales not be skyrocketing? We need advertising funds necessary to commercialize these products. We have multiple products to launch. We need to get the word out to the people.

At EPA you deal with huge companies who may consider \$10,000 pocket change, but to a small business, it can be devastating.

Yesterday, I was given notice by Phillips Company of its intent to close the manufacturing site in Oklahoma and file bankruptcy. This will be a huge mistake and a major loss of these products that can help so many. I hope this is not a definite decision.

The impact of the closing of the manufacturing site to my business is also dramatic. This will close my business as a distributor and the loss of my investment.

Thank you for your consideration



Best Regards!

Phyllis Ferris, President  
Phyllis Ferris Distribution Service, Inc.  
321-267-6365

---

New Low Prices on Dell Laptops - Starting at \$399